Michael Tizzano 11 Yennicock Ave 1<sup>st</sup> Fl. Port Washington NY 11050 FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT FOR NY

★ FEB 15 2024

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LONG ISLAND OFFICE

New York February 13, 2024

The Honorable Judge Natasha C. Merle United States District Court Easter District of New York 100 Federal Plaza Central Islip, New York 11722

Re: Hernandez Vs Rosso Uptown Case 2:20-cv-04026-JMA-SIL

Dear Honorable Judge Natasha C. Merle,

I hope you are doing well, I was informed by Mr. Gammella (defendant pro se) that you are now presiding the above mentioned case and are substituting the Honorable Judge Joan M. Azrack. Due to our impossibility to establish communication with our attorney, Mr. Gammella and I are proceeding pro se as noted in our last pretrial conference by Judge Steven I. Locke. I am providing you with copies of my last filing, also exchanged with Mr. Moser at our last pretrial conference.

Respectfu/fy

Michael Tizzano

Michele Tizzano 11 Yennicock Ave Port Washington, NY 11050

New York January 25, 2024

The Honorable Joan M. Azrack District Judge United States District Court Eastern District of New York 100 federal Plaza Central Islip, New York 11722

Re: Hernandez vs Rosso Uptown Case 2:20-cv-04026-JMA-SIL

### **PRETRIAL**

### Motion to dismiss pre trial

Dear Judge Azrack,

I hope this letter of mine finds you well. It has been impossible for me to establish any contact with the attorney that is representing Mr. Gammella and that was extending his help to me. I tried to reach him and asked if he could present any letter to the court stating he would withdraw from the case allowing me to proceed pro-se, all my attempts have been unsuccessful.

I am writing to bring to your attention certain key aspects of the ongoing case, specifically the plaintiffs' attorney claims against me as on officer and owner of the corporation in question. I have legal proof that I was never an employee or an officer of "Rosso Uptown LTD"

I have diligently cooperated with the plaintiffs' attorney through the discovery and deposition process, I have provided Mr. Moser extensive documentation, including Schedule k-1 (form 1120s) **Exhibit A**, and form 2553 **Exhibit B**, which unequivocally demonstrate that I hold zero ownership in the corporation being sued, these documents are not only legally valid but also refute the plaintiffs' baseless assertions.

Furthermore, I would like to highlight that upon information shared with me by Mr. Gammella, the corporation's annual sales fall below the \$500,000 thresholds, rendering it exempt under the fair Labor standard Act (FLSA). This exemption further underscores the lack of merit in the plaintiffs' claims against me as I don't qualify as an employer.

According to the U.S. Department of Labor, the act applies to businesses with \$ 500,000 in annual dollar volume of business or more. A company with less than half a million dollars in annual business is generally not covered"

It is essential to note that the evidence presented to me at deposition by the plaintiffs' lawyer in the form of Facebook posts or Newspaper's ads, is largely **hearsay** and lacks the necessary legal foundation. Despite my efforts to provide Mr. Moser with irrefutable proof of my non-involvement in the ownership of the corporation, the plaintiffs' case remains unsupported by credible evidence.

Furthermore, I am attaching supporting documentation (**Exhibit C**) that illustrate the extent of my financial distress. Due to unforeseen circumstances, I am currently facing significant economic hardship that if the court will impose me to fulfill any monetary compensation, my obligations to the State and IRS (and Income Execution **Exhibit D**) it will make it nearly impossible for the plaintiffs to collect.

In light of the aforementioned circumstances, I kindly request the court's dismissal in the **interest of justice** of this case against me. The plaintiffs' failure to present **competent legal evidence** and clear documentation proving my non-ownership should be sufficient grounds for dismissal.

In the eventuality of a trial, this is my list of witnesses and subpoenas I intent to exercise:

Joe De Guida, Chase Bank

I appreciate your attention to the matter and trust that the court will evaluate the evidence objectively. Thank you for your time and consideration.

Respectfully,

Michael Tizzano



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addess summerces	den	2	Net rental real estate income (loss)	Affection	
Shareholder's Share of Income, Deductions Credits, etc. > See back of form and separate Instructions	lv .	3	Other net rental income (loss)		
Part I Information About the Composition	40	4	Interest income		
A Corporation's employer identification number 46-1806292		88	Ordinary dividends		
B Corporation's name, address, city, state, and ZIP code ROSSO UPTOWN LTD	limin kan garilar panananan kana erra	8b	Qualified dividends	14	Foreign transactions
1	ā,	8	Royalties		·
52 MAIN STREET Port Washington NY 11050-2952		7	Net short-term capital gain (loss)		ynanchaelus da meritiigid aran yasiky hilly dada jilaadala da jerpa meritaan ka e aaska ramemaan anna ameerita
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MASSIMO GAMMELLA 664 FLANDERS DR		10	Other income (loss)	18	Alternative minimum tax (AMT) items
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			* See attached statemen	t for a	dditional information.

Filed Pursuant to Rev. Proc. 2013-30 Election by a Small Business Corporation (Under section 1962 of the Informal Revenue Code)

See Parts II and III on page 3. Fem 2553 QLIB No. 1646-0123 You can fex this form to the IRS (see separate instructions).

Information about Form 2663 and its expansis instructions is at were instructions. Destriment of the Ta Irland Revise Beris This election to be an 8 corporation can be accepted only if all the tests are mot under Who May Elect in the instructions, all sharehelders have eigned the consent statement, an officer has signed below, and the exact name and address of the corporation (entity) and other required form information have been provided. Election Information Part I Employer Identification number Name (tee Instructions) 46-1806292 ROSSO UPTOWN LTD Oats toporpressed Number, street, and room or sulle no. (If a P.O. box, see instructions.) Туре or Print 01/15/2013 52 MAIN STREET State of Incompetation City or tourn, state, and ZIP code NY 11050-2952 Port Washington D. Check the specialists boules) if the corporation (entity), after applying for the EIN shown in A above, changed its name or attress E Election, is to be effective for tex year beginning (month, day, year) (see instructions) Caution. A compretion (entity) making the election for its first tax year in existence will usually enter the beginning date of a short tax year that begins on a date other than Jenuary 1. P Selected tex year: (1) Calandar year (2) Fiscel year anding (month and day) (3) 82-53-week year ending with reference to the month of December (4) 52-53-week year ending with reference to the month of If box (2) or (4) is checked, complete Part II G if more than 100 shareholders are listed for liam J (see page 2), check this box if treating members of a family as one shareholder results in no more than 100 shareholders (see test 2 under Who May Elect in the trainuctions) Name and fille of officer or logal representative who the IRS may call for more information Telephone number of officer or legal representative 516-633-7977 PRESIDENT Massimo Gammella If this 8 corporation election is being filed late, I declare that I had reasonable cause for not filing Form 2553 banely, and If this late efection is made by an entity eligible to elect to be treated as a corporation, I declare that I also had reasonable cause for not filling an entity classification election timely and that the representations listed in Part IV are true. See below for my explanation of the reasons the election or elections were not made on time and a description of my diligent schools to correct the mistake upon its discovery (see Instructions). Election was filed for both NYS and the IRS. For some reason there was an administrative error and the original 2553 was not recorded. Auxil have professed this election, including accompanying documents, and, to the best of my theis tristing to the clocken, and such rects are true, correct, and corr Sign PRESIDENT AND Here

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For Paperwork Reduction Act Notice, see separate instructions.

MASSIMO GRAMMETLIA

Form 2853 (Rev. 12-2018) ROSSO UPTOWN I	ard		46-18062	92	Page 2
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Case 2:20-cv-04026-NCM-SIL Document 67 Name search:	Filed 02/15/24 Page 10 of 13 PageID #: 361 Contains this word(s)
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Case 2:20-cv-04026-NCM-SIL Document 67 Filed 02/15/24 Page 13 of 13 PageID #: 364

HON, CONRAD B. DUBERSTEIN

CHIEF U.S. BANKRUPTCY JUDGE

EASTERN DISTRICT OF NEW YORK

271 CADMAN PLAZA EAST

**BROOKLYN, NEW YORK 11201** 

OFFICIAL BUSINESS PENALTY FOR PRIVATE USE \$300

M. T. 771 NO

CNSR-NO. 2:20-CV-04026-JMA-SIL